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Principles of the execution of responsible objects auction principles

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Abstract. This type of legal research in this study uses juridical-normative. Ratio Legis to Mortgage Certificates based on Article 14 of the Mortgage Law Number 4 of 1996, has met the legal requirements, because the creditor and debtor have made a Credit Agreement in which the Power of Attorney to impose Mortgage and Deed of Granting Mortgage, and Acknowledgment of *Gross Debt* Deed is made before a Notary Official / Land Deed Making Officer, as Article 10 in *juncto* with Article 14 of the Mortgage Law provides legal protection to the main creditor, because the object of the mortgage has been registered with the Land Office so that it has executive power over the object Mortgage right. Fiat Court executes mortgage object at the request of the creditor in which the debtor cannot sell the object as pledged voluntarily, the creditor requests the Chairman of the Court to request legal protection, and justice to the State Apparatus, on the Mortgage Certificate which already has the Executorial Power of the Object of Rights dependents.

Keywords. principles, execution, responsible

Introduction

Bank is a financial institution that collects funds from the public in the form of savings and distributes them to the public in the form of credit and or other forms in order to improve the people's standard of living.(Putera, 2020) One of the products provided by the bank in helping debtors to be able to develop the community's business world, by providing credit facilities to the community based on three pillar factors, namely business prospects, performance, and the ability of prospective debtors. Business prospects are a general description of the business being run for the future. The success of a business depends on the factors of the entrepreneur himself, both from within and from outside. Customer performance is the ability of customers to pay off their debts in accordance with the agreement set by both parties. While the ability of the prospective debtor is said to be capable if it meets the 5 C requirements, namely *Character, Capacity, Capital, Condition, Collateral*. This means that if the customer has fulfilled these 5 principles, it is certain that it will be easy to access credit at the bank.

The guarantee function gives the bank as the creditor(Admati et al., 2009) the right and power to repay the collateral if the debtor defaults, is negligent in his obligations, the debtor's property will be sold and the proceeds from the sale of the object will be divided by the creditors on a *prorated* (proportional) basis and *pari passu*.(Niven, 2017) *Prorata* means a debt calculation based on the amount of receivables from each creditor compared to the overall

receivables for the entire wealth of the debtor.(Martinezaguirre-Betolaza et al., 2020) Meanwhile, *Pari passu* is the right of the creditor on the debtor's assets to get repayment together, without any precedence.(Buchheit & Pam, 2018)

Philosophically, the implementation of the object of the mortgage auction in Article 6 is based on a sense of justice, expediency, and legal certainty.(Kongres, 2019) Justice means that the creditor can sell the object of mortgage because the debtor defaults and takes the remaining debt of the debtor, with the auction implementation regulations can provide benefits and legal dynamics in society, auction execution with the executorial power of the mortgage certificate so that there is legal certainty regarding the parties involved interested parties, both from the creditor and from the debtor, as well as Regulation of the Minister of Finance Number 27/PMK.06/2016, concerning Instructions for Implementation of Auctions.

Historically the mastery of a statutory regulation, the regulation in the implementation of the execution auction object if the debtor is in breach of contract, defaults, is negligent with his obligations has been regulated in Law Number 4 of 1996 concerning Mortgage Rights. The first mortgage holder (creditor) can sell the mortgage object through a public auction by taking payment of the proceeds from the sale, the debtor does not agree or object to the object being auctioned, based on Article 20 the object of mortgage can be executed with the executorial power of the mortgage certificate as intended in Article 14 paragraph (2). The object of the mortgage can be sold through a public auction according to the procedure determined by the laws and regulations for the settlement of the debt of the mortgage holder with the right to take precedence over other creditors.(Noor & Heradhyaksa, 2020)

Sociologically, people in dealing with a problem tend not to take care of their own needs, this is a new fact that only documents are fulfilled.(Kurniasari et al., 2020) If there is a problem in the community, then the community asks for help from people who are considered capable of solving it. Based on Article 20 paragraph (1), letters a and b of the Mortgage Law Number 4 of 1996, for Mortgage holders when the debtor is in breach of contract for the ease of execution of the Mortgage Guaranteed object, it can be reached through *Parate executive*; *Executive Titles*; and underhand sales.

The problem faced by the creditor in the execution of the Mortgage Right is that it's not easy to sell the object of the Mortgage to pay off the debt because the debtor has filed a lawsuit, so the auction has no legal force and the auction is null and void. This is in line with Supreme Court Decision No. 320 K/Pdt/1980 dated 20 May 1984. The decision does not justify the conduct of auction sales based on the *aigenmachtige verkoop* clause by creditors without going through a court process on the grounds that: every auction sale based on Article 224 HIR, must go through court intervention; auction sale is not valid, if it is held without public office; and what is meant by the general office in Article 1211 of the Civil Code is the court, not the auction office. Based on the description on the background, the problem is formulated as follows, what is the legal ratio of the Mortgage Certificate with the Power of Executorial Auction ? and What is the Function of Court Fiat in Executing Auctions Through Mortgage Certificates?

Research Method

This type of legal research in this study uses juridical-normative.(Riawan et al., 2019)

Research Results and Discussion

Ratio Legis Mortgage Certificate with Executive Power

The results show that the Legis Ratio to Mortgage Certificates based on Article 14 of the Mortgage Law Number 4 of 1996, has fulfilled the legal requirements, because the creditor and debtor have made a Credit Agreement in which the Power of Attorney to impose Mortgage

and Deed of Granting Mortgage, as well as the acknowledgment of *Gross Debt* Deed made before a Notary Official/Land Deed Making Officer, as Article 10 in *juncto* with Article 14 of the Mortgage Law provides legal protection to the main creditor, because the object of mortgage has been registered with the Land Office so that it has executive power over The object of the Mortgage, at the head of the Mortgage Certificate, reads, "*For the sake of Justice in One Godhead*" so that if the debtor is in default, negligent with his obligations, the creditor has received legal protection. Preferred creditors so as not to lose their rights and position from other creditors, namely concurrent creditors and separatist creditors, the power of certificates burdened with mortgage rights can be protected by the Mortgage Law Number 4 of 1996.(Novitayaningsih & Nasution, 2019)

However, in solving the problems mentioned above, using Gustav Radburck's theory of legal goals, he teaches three basic ideas of legal objectives, namely, justice, expediency, and certainty. This goal is based on three basic legal values which have the same position as the legal principle.(Heusel, 2021)

Justice (Michael, 2019) associated with mortgage rights with executorial power, according to Article 20 of the Mortgage Law, aims to provide convenience to creditors in fulfilling their receivables if the debtor defaults. Creditors can sell the object of mortgage on their own power without having to go through a judicial institution.

Benefit, Adherents of the utility stream assume that the purpose of the law is solely to provide the greatest benefit to as many people as possible. If it's related to the encumbrance, it has executorial power. The decision to execute the mortgage must be beneficial for both the creditor and the debtor. In accordance with the Regulation of the Minister of Finance of the Republic of Indonesia, Number 27/PMK.06/2016, concerning Instructions for Implementation of Auctions, in Article 27 letter c, the opportunity for a third party resistance lawsuit (*derden verzet*) is justice for the debtor who has property rights that have been collateralized in credit.(Bauw, 2019) So that in the implementation of the auction the execution of the mortgage object cannot be carried out smoothly and must be postponed pending a permanent legal court decision. With the opportunity for a lawsuit from the debtor, there is a synchronization between the regulations governing the execution in Article 6 of the Mortgage Law Number 4 1996 (UUHT), if the debtor defaults or defaults, the first Mortgage holder has the right to sell the Mortgage object on his own power without the debtor's approval, and can directly apply for an auction through the State Wealth Service and Auction Office, and or submit an application for auction sales by execution with a request for Fiat determination by the Local District Court, to take the settlement of its receivables from the proceeds of the sale, with the principle of implementing an execution auction.(Buana, 2014)

Justice associated with mortgage rights with executorial power.(Vivian, 2021) According to Article 20 of the Mortgage Law, aims to provide convenience to creditors in fulfilling their receivables if the debtor defaults.

Benefit, Adherents of the utility stream assume that the purpose of the law is solely to provide the greatest benefit to as many people as possible. If it's related to the encumbrance, it has executorial power. When executing mortgage rights, careful consideration is needed so as not to harm both parties.

Legal certainty is the implementation or enforcement of the law for actions regardless of the legal subject who commits or the perpetrator.(Portuese et al., 2017) The theory of legal certainty contains two meanings, First, there are general rules that make individuals and know what has been done can be done or not done in action. Second, a legal security for individuals from government arbitrariness because with the existence of general legal rules, individuals can know what is imposed or done by the State against individuals. If it's associated with the

execution of mortgage rights with executorial power, legal certainty emphasizes the sale under the hand is an agreement between the creditor holding the mortgage with the debtor giving the mortgage, usually this method is taken to get the highest results in the sale of the mortgage object so that it benefits both parties, as it's regulated in Article 20 paragraph (2) of the Mortgage Law "with the agreement of the grantor and the holder of the Mortgage, the sale of the object of the Mortgage can be carried out under the hands if in this way the highest price can be obtained that benefits all parties." (Huhta, 2020)

The Function of Court Fiat in Carrying Out Executions through Mortgage Certificates

The results showed that the Fiat Court executed the mortgage object at the request of the creditor in which the debtor couldn't sell the object he pledged voluntarily, the creditor asked the Chief Justice for legal protection, and Justice for the State Apparatus, related to the Mortgage Certificate which already has the power. The execution of the Mortgage Object, based on Article 14 of the Mortgage Law Number 4 of 1996, because at the head of the Mortgage Certificate it reads, "FOR JUSTICE BASED ON THE ALMIGHTY GOD" (Michael, 2011) so that if the debtor is in default, he is negligent of his obligations. On Article 6 *juncto* Article 10 of the Mortgage Law to provide legal protection in executing the mortgage object by force, the creditor will sell and take the remaining debt of the debtor and if there is any remaining will be returned to the debtor, based on the Credit Agreement. The authority of the Court to execute Mortgage Objects is the Court of the First level so that the decision of the Chairman of the Court is the end which already has the Executorial Power, which of course has been based on legal principles and is based on the Mortgage Legislation.

The results of the research above, supported by the research results of R. Suharto, said that in practice the auction of Mortgage executions could be carried out through the Execution Parate. The creditor must make a written bid request accompanied by the tender requirements documents to the State Property and Auction Service Office, besides the execution can be carried out based on the Fiat Execution principle which will sell the object of the Mortgage Guarantee through the local District Court. If the debtor is not willing and refuses to vacate the object of the Mortgage Guarantee, the buyer of the object of the Mortgage Guarantee can apply to the Court without going through a lawsuit based on Article 200 paragraph 11 HIR and the opinion of the Circular Letter of the Supreme Court no. 4 of 2014.

Likewise, the results of Pandu Dwi Nugroho's research, Siti Malikhatun Badriyah, said that the auction was carried out by the KPKNL in accordance with Minister of Finance Regulation No. 102/PMK.01/2008 concerning Organization and Work Procedure of Vertical Agencies of the Directorate General of State Assets Article 29 paragraph (1). Law No. 4 of 1996 Article 10 paragraph (1) stipulates that the granting of a mortgage is preceded by a promise to provide a mortgage as a guarantee for the repayment of a certain debt, which is an inseparable part of the debt agreement concerned. The object imposed on the mortgage is under the authority of the recipient of the mortgage. This aims to provide legal protection and certainty to creditors if the debtor is in default. In the event of a breach of contract, the object which is pledged as collateral will be sold to pay off the debtor's guaranteed debt. (Spiro, 2015)

Judging from the aspect of justice, it can be seen that during the execution process the Mortgage must be in accordance with the laws and regulations to protect the debtor itself. However, the reality in society is that there are still many debtors who are harmed, especially by banks carrying out executions on the basis of Article 6 of Law Number 4 of 1996 concerning Mortgage Rights which is related to the principle of equality before the law.

The aspect of benefit between creditors and debtors has received legal protection in the credit process without either party being harmed. While the legal certainty is that both creditors and debtors can be guaranteed their legal rights through the provisions in Article 14 of the Mortgage Law, thus the legal goals and ideals have been created with the provisions of Article 14 of Law Number 4 of 1996.

This External Protection is generally a bulwark prepared by legislators in order to ward off losses as well as injustice, for potential creditors and debtors that can override one of the contractual bindings or credit agreements. (Supriadi et al., 2020)

Internal legal protection to fortify securing the interests of the parties who have agreed to jointly have a balanced bargaining position, in a balanced *bargaining position* an agreement to protect the interests of each healthy contract, so that if the parties agree and exchange their will, it's stated in the clause contract commensurately together, then in fact these contracts have built an Internal legal protection created by them.

Conclusion

Ratio Legis to Mortgage Certificates based on Article 14 of the Mortgage Law Number 4 of 1996, has met the legal requirements, because the creditor and debtor have made a Credit Agreement in which the Power of Attorney to impose Mortgage and Deed of Granting Mortgage, and Acknowledgment of *Gross Debt* Deed is made before a Notary Official / Land Deed Making Officer, as Article 10 in *juncto* with Article 14 of the Mortgage Law provides legal protection to the main creditor, because the object of the mortgage has been registered with the Land Office so that it has executive power over the object Mortgage right.

Fiat Court executes mortgage object at the request of the creditor in which the debtor cannot sell the object as pledged voluntarily, the creditor requests the Chairman of the Court to request legal protection, and justice to the State Apparatus, on the Mortgage Certificate which already has the Executorial Power of the Object of Rights dependents.

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